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AGENDA ITEM #3468

WATER/FLC/MXK/AJT:jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION
Water Branch

RESOLUTION W-4470
May 6, 2004

R E S O L U T I O N

(RES. W-4470), DEL ORO WATER COMPANY, LIME SADDLE DISTRICT (DOWC). ORDER AUTHORIZING A SURCHARGE OF \$2.17 PER MONTH PER CUSTOMER FOR FIVE YEARS PRODUCING AN ANNUAL INCREASE IN REVENUE OF \$11,889 FOR A TOTAL OF \$59,445 TO RECOVER LEGAL EXPENSES.

SUMMARY

By Supplemental Advice Letter No. 126-A filed on April 8, 2004, Del Oro Water Company (DOWC) requests a surcharge of \$2.17 per month per customer for five years producing an annual increase in revenue of \$11,889 for a total of \$59,445 to recover legal fees and other costs incurred by the utility in defending complaints filed by private parties in Butte County Superior Court and at the California Public Utilities Commission (CPUC or Commission). In Res. W-4253 and W-4351 dated April 19, 2001 and October 24, 2002, respectively, the Commission authorized DOWC to establish memorandum accounts to track the legal expenses associated with these complaints. The complaints have been resolved in the utility's favor and this resolution authorizes recovery of those expenses as requested by Supplemental Advice Letter 126-A.

BACKGROUND

DOWC is a Class B utility serving approximately 457 customers in its Lime Saddle District near Chico, California. DOWC was sued in Superior Court, Butte County by John Lane, Cathy Lane, Jack Jacobs, Shirley Jacobs, Charles Kasza and Elizabeth Kasza Case (C.)124951) and by Breuer, Inc. (C.125188) over main extension contracts. In addition, a similar complaint was filed by Breuer, Inc. on May 9, 2002, at the CPUC (C.02-05-035). Plaintiffs in these cases alleged that DOWC breached main extension contracts by failing to install the facilities described in the contracts. In Decision (D.)03-07-025, the Commission determined that DOWC had not breached the contracts with plaintiff, Breuer and hence, the complaint was denied. After the Commission complaint was resolved in DOWC's favor, plaintiffs in both Superior Court lawsuits effectively abandoned the cases and those suits were dismissed on September 8, 2003 (Breuer) and October 28, 2003 (Lanes), respectively.

DISCUSSION

Res. W-4253, dated April 19, 2001, authorized DOWC to establish a memorandum account for litigation expenses to track the costs of legal fees and other charges in association with two lawsuits, C.124951 and C.125188, in Butte County Superior Court. Res. W-4351, dated October 24, 2002, authorized DOWC to establish a memorandum account to track the costs of legal fees and other charges in association with CPUC complaint C.02-05-035.

On December 24, 2003, DOWC filed Advice Letter 126 requesting recovery of \$70,952. 54 in legal expenses associated with the Superior Court and the CPUC complaints. The advice letter requested that recovery be spread over a 60-month period with each service connection receiving a surcharge of \$2.59. The Water Division (Division) reviewed the invoices, time sheets, and the calculation of the reimbursement surcharge and has made the following adjustments:

- 1) The total legal expenses, excluding interest, incurred for years 2002 and 2003 was \$69,252.
- 2) The total legal expenses, excluding interest, incurred for 2002 was \$47,104. DOWC did not exceed its authorized rate of return for 2002 and is entitled to collect full recovery of its 2002 legal expenses plus interest. The

Division, however, adjusted the interest using the recorded 90-day Commercial Paper Rate. The total reasonable amount is \$47,194 for 2002.

- 3) The total legal expenses incurred for 2003 was \$22,148, or \$22,313 including interest. DOWC exceed its authorized rate of return for 2003 and over-earned by \$10,063, including interest. The amount of legal expense was adjusted downward to reflect the over-earning resulting in an allowable recovery of \$12,250 for 2003.

The total legal expenses for 2002 and 2003 are summarized as follows:

Legal expenses 2002:	\$47,104
Interest earned 2002:	\$91
Legal expenses 2003:	\$22,148
Interest earned 2003:	\$164
Less over-earned revenues:	<u>(\$10,063)</u>
Net recovery amount:	\$59,444

Spreading the net recovery recommended by the Division of \$59,444 among 457 customers over a 5-year period yields a monthly surcharge of \$2.17 per customer.

DOWC concurred with the above findings and has now filed supplemental Advice Letter No. 126-A on April 8, 2004, with the corresponding figures.

The Division concludes that the utility's recovery of the adjusted legal expenses is reasonable. The Commission did not authorize DOWC any allowance for legal expenses in its last general rate case (See Resolution W-4302, dated October 25, 2001). It was in the ratepayers' interest that the utility contested the lawsuits and CPUC complaint. Although the Breuer's case, C.02-05-035, has no direct impact on the rates, had the plaintiff prevailed, the utility may have had to pay back contributions made by the plaintiff thereby increasing its rate base. This would have resulted in increasing costs to existing ratepayers who have to pay the return on higher rate base. As a result of DOWC's dispute of the allegations, the plaintiffs abandoned the lawsuits, which were ultimately dismissed.

NOTICE AND PROTESTS

A notice of the proposed surcharge was published in the December 23, 2003 edition of the Paradise Post. The Division received one protest to the surcharge, which expressed the opinion that the customers should not bear the legal costs because the general community has no control over who brings lawsuits against the utility and suggested that the utility counter-sue for lost legal fees. Because the Plaintiffs chose to abandon their lawsuits and the court ultimately dismissed the cases, there was no hearing, trial, or ruling with respect to the complaints or on the issue of attorney fees. Furthermore, there is no process for recovery of legal fees expended in connection with a complaint brought before the Commission.

COMPLIANCE

There are no outstanding Commission orders requiring system improvements. DOWC has filed annual reports as required.

FINDINGS AND CONCLUSIONS

1. The five-year monthly surcharge of \$2.17 recommended by the Division is reasonable and should be authorized.
2. DOWC should collect the five-year surcharge beginning five days after the effective date of this resolution.
3. The five-year surcharge should terminate once the amount of \$59,444 plus interest has been collected.
4. This is an uncontested matter subject to the public notice comment exclusion provided in the Public Utilities Code Section 311(g)(3).

THEREFORE IT IS ORDERED THAT:

1. Del Oro Water Company's Lime Saddle District is authorized to make effective the revised Schedule LS-1A, Annual Metered Service, which is attached hereto and concurrently to cancel its presently effective rate schedule. The effective date of the new schedule shall be five days after the

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date of this resolution.

2. The Del Oro Water Company, Lime Saddle District shall collect the five-year surcharge beginning five days after the effective date of this resolution.
3. The Del Oro Water Company, Lime Saddle District's five-year surcharge will terminate once all allowable expenses plus interest have been collected.
4. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 6, 2004; the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director